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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 161

CENTRAL STATE BANK, PETITIONER,

v.

J. M. STEWART ET AL., RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA AND BRIEF IN SUPPORT THEREOF.

J. G. GAMBLE,
A. B. HOWLAND,
Counsel for Petitioner.

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The decision below is of rights arising under the Fourteenth Amendment to the Constitution of the United States and Section 5219 of the Revised Statutes of the United States, and is contrary to and in conflict with prior decisions of this court, and of final decisions of other Federal courts.

The decision below denied a recovery of taxes exacted in violation of the laws or Constitution of the United States by compulsion, and is in itself a contravention of the Fourteenth Amendment.

The decision below is of substantial Federal questions and is based upon untenable conclusions of general law, and is in conflict with the weight of authority.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No.

CENTRAL STATE BANK, PETITIONER,

v.

J. M. STEWART, CHAIRMAN OF THE BOARD OF SUPERVISORS OF POLK COUNTY, ET AL., RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States:

The petitioner, Central State Bank, respectfully states and shows to this Honorable Court:

Summary Statement of the Matter Involved.

The petitioner, a state bank organized and existing under the laws of the State of Iowa, relating to banking institutions, was at all times herein referred to, engaged in the business of banking in the City of Des

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Moines, Polk County, Iowa. It brought this action in mandamus in the District Court of Polk County, Iowa, seeking a writ directing the respondents, in their respective capacities as members of the Board of Supervisors and County Auditor and County Treasurer of said county (proper substitution of successors in office during the pendency of the action, having been made), to refund to the petitioner certain taxes and penalties thereon erroneously and illegally exacted of the petitioner by said respondents and by the taxing officers of the county in the years 1919 to 1922, inclusive. The proceeding is one authorized by the Statutes of Iowa in force at the time the cause of action accrued (Code 1897, Section 1417) now included in the Code of 1927 as Section 7235.

During the four years involved the statutes of Iowa provided that the shares of national banks, state banks, loan and trust companies and "all moneyed capital within the meaning of section fifty two hundred nineteen of the revised statutes of the United States" should be taxed at the combined millage rate for State, County, City and school purposes, applied to twenty per cent of the actual assessed value thereof. See Sec. 1310-1322 and 1322-1*a* Code Supplement 1913, Appendix. The combined millage rate was commonly referred to as the "consolidated levy." The Iowa statutes also required that moneys and credits, annuities, cash, U. S. legal tender currency, notes, including those secured by mortgages, bonds, debentures, accounts, contracts, bills of exchange, judgments, liens and choses in action be taxed at the uniform rate of five

mills on the dollar applied to the actual assessed value. See Sec. 1310 Code Supp. 1913. Appendix.

The basis of the action was:

First. That during the four years in question the taxing officials of the City of Des Moines and County of Polk subjected the shares of the petitioner to taxation at the consolidated levy rate applied to twenty per cent of the assessed value; but at the same time deliberately, systematically and intentionally subjected all competing moneyed capital, as defined by Sec. 5219, to taxation at but five mills on the dollar, and thereby subjected the shares of stock of petitioner to taxation in said years at rates from five to seven times the rate imposed upon "such other moneyed capital." That the deliberate, intentional, systematic and habitual discrimination thus practised against the shares of petitioner constituted a violation of the restrictions contained in Section One of the Fourteenth Amendment to the Constitution of the United States, and the action of the state, through its duly constituted taxing officers constituted not only a violation of the laws and constitution of Iowa but as well a violation of the equal protection clause of the Fourteenth Amendment to the Federal Constitution.

Second. That the action of the taxing officers of Polk County and of the City of Des Moines was systematic, habitual, and was deliberately followed during all of said years as part of a plan for the administration of the taxing laws of Iowa and as such constituted a clear, deliberate and intentional discrimination be-

tween taxpayers placed within the same class. That by the action of the taxing officers charged with the administration of the tax laws in said City and County the petitioner was denied the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States.

That the county treasurer of Polk County, Iowa, the collecting agent of taxes for the State of Iowa and all of its political subdivisions, demanded of the petitioner that it pay taxes upon its shares at the said consolidated levy rate, together with interest and penalties thereon, and threatened to enforce collection of said taxes, interest, and penalties by seizure and sale of plaintiff's property; that in order to prevent the sale of its property and the accumulation of penalties, the petitioner, on November 30, 1923, under protest, paid to the said treasurer the following amounts, to-wit:

Year.	For taxes.	For penalties.
1919	$8,745.48	$3,945.37
1920	10,286.68	3,908.34
1921	12,292.62	3,196.08
1922	14,343.65	1,147.49

Third. That in the year 1923, suits were instituted in the United States District Court for the Southern District of Iowa, against the County Treasurer of Polk County, Iowa, by the Des Moines National Bank, The Bankers Trust Company and the Iowa Loan & Trust Company, which resulted in judgments permanently enjoining the County Treasurer and his successors in office, from collecting taxes against the shares of the three banks named, at a greater rate than five (5) mills on the dollar of actual valuation for the

years 1919 to 1922, inclusive, on account of the unlawful and unconstitutional administration of the statutes of the State of Iowa, by the taxing officers of the City of Des Moines and of Polk County. The Des Moines National Bank was organized under the national banking laws and the Bankers Trust Company and Iowa Loan & Trust Company were organized under the Iowa law, relating to state banks and trust companies. That the said county treasurer appealed from said judgment and decree, and the board of supervisors and the State of Iowa, by the Attorney General, and the City of Des Moines, by its corporation counsel, all appeared in said cause upon its trial in the District Court, and in the appeal therefrom to the Circuit Court of Appeals of the United States for the Eighth Circuit, and participated in the presentation of the defense to said action, and bore a part of the expense of the defense of said action. That the judgment and decree of said District Court of the United States was affirmed by said Circuit Court of Appeals of the United States and no review thereof was sought in this Court, so that said judgment became final. That under and pursuant to said judgment, and because of the unconstitutional and unlawful acts of the taxing officials of the same taxing district for the same years involved in this cause as determined in said action, the shares of stock of said Des Moines National Bank, Bankers Trust Company and Iowa Loan & Trust Company, were subjected to taxation at only five mills on the dollar.

Respondents, by way of answer in said action, admitted that levies were made upon the shares of petitioner substantially as alleged in the petition, but pleaded other defenses which may be summarized as follows:

1. A denial of facts not admitted.

2. That the money paid by the petitioner in each of the years in controversy had been distributed to the various political subdivisions entitled thereto, and respondents had no money with which to make refund to petitioner if the court were to so decree.

3. The statute of limitations.

4. Laches.

5. That the petitioner had a plain, speedy, and adequate remedy at law.

6. That the remedy of the petitioner, if any, is by appeal from the action of the board of review.

7. The petitioner is not entitled to maintain an action in mandamus.

8. That petitioner may not recover because of a violation of the taxing statutes of Iowa by the taxing officers.

9. That the petitioner does not come into court with clean hands, in that during the years in controversy the plaintiff, through its officers and agents, assisted and aided other taxpayers in evading and dodging taxation in Polk County, Iowa, and elsewhere.

10. That petitioner may not maintain an action to procure refunds of the taxes upon its shares of stock, even though paid by it, because it is not the proper party to maintain such action.

11. That the District Court was without jurisdiction to grant the relief prayed, for it affirmatively appeared, that, after the institution of the action, the board of supervisors had denied the claim, and that such action by the board of supervisors constituted a judicial determination and finding, which cannot be collaterally attacked in a mandamus action, and that petitioner's remedy, if any, was by certiorari and not by mandamus.

12. That there was no adjudication in the action in the United States Courts, except an adjudication that the county treasurer should be enjoined from collecting certain taxes upon the shares of the Des Moines National Bank, and that the same was in no way binding upon the respondents.

Upon the trial of said action the following material facts were adduced:

In January of each of the years involved, petitioner made to the city assessor of Des Moines, Iowa, a statement as required by Section 1322, Code of Iowa 1897, and 1322-1-*a*, Code Supplement 1913 (R. 230-231, 1061), which disclosed the total amount of capital, surplus and undivided earnings, and the book value of the real estate of petitioner as of January 1st of each year. The said city assessor made one assessment in a lump sum upon all the shares of petitioner, and entered the

same under the head "corporation stock" upon form No. 1 of the assessment rolls (R. 229, 230, 1064, 1065). The assessment rolls were, as required by statute, laid before the City Council of the City of Des Moines sitting as a board of review in each year by said assessor, and said board of review adjourned *sine die* on April 30, 1919, for that year, on May 1, 1920, for that year, on April 20, 1921, for that year, and on May 6, 1922, for that year (R. 619, 620).

Corporations engaged in the loan business made statements to the city assessor for taxation purposes in each of the said years upon forms furnished by the assessor (R. 1056, 1057), and the assessor made assessments upon the shares of such corporations upon form No. 1 of the assessment roll and entered the same under the head "corporation stock" (R. 1053). When such assessments had been completed, and after the board of review had met and adjourned in each of said years, the assessor copied the assessments into books referred to as assessor's district books (R. 1070, 274). The assessor's books were then certified and transmitted to the county auditor, and such assessments on the assessor's district books (other than the assessments of banks and trust companies) as "corporation stock" were placed on the tax list in each of said years as "moneys and credits" and taxed at the rate of five mills on the dollar (R. 277-281). All assessments upon the shares of mortgage loan companies, investment companies, and companies engaged in the purchase and sale of commercial paper, were uniformly

and intentionally taxed at such rate of five mills on the dollar in all of the said four years (R. 280).

The city assessor made assessments against individuals holding notes, bonds, mortgages, and other evidences of indebtedness on form No. 2 of the assessment roll (R. 660, 1059), from which the debts of the taxpayer were deducted from his credits, and the net amount was certified upon the assessor's district books to the county auditor. In the four years in question all such net assessments against individuals owning notes, mortgages, bonds, or other evidences of indebtedness, were taxed at five mills on the dollar (R. 278).

There was no moneyed capital in the hands of individual citizens taxed at a higher rate than five mills on the dollar (R. 278, 285).

The consolidated levy in each of said years consisted of the total millage requirements for state, county, city and school purposes (R. 172), and for the year 1919 was 137.8 mills; 1920, 157 mills; 1921, 164 mills; 1922, 160.4 mills (R. 172), which millage was applied to 20 per cent of the total value of the shares of stock of petitioner as assessed by the assessor (R. 85). The tax lists were made up by the county auditor after the assessor's books and assessment rolls had been certified to him, after the board of review had adjourned in each of said years, and were not completed until after it was known what the consolidated levy millage rate would be (R. 276). In 1919 this rate was not known until after September 19 (R. 628); in 1920 until after September 7 (R. 626); in 1921 until after November 17 (R. 627); in 1922

until after September 22 (R. 627). The total assessed values of the shares in all national and state banks and trust companies in the City of Des Moines in said years was as follows:

	1919.	1920.	1921.	1922.
National Banks.....	$3,099,205	$3,276,168	$3,587,657	$3,485,535
State Banks and Trust Companies	4,519,134	4,634,356	6,320,367	6,086,481

(R. 788.)

The shares of stock of 27 domestic corporations, engaged in various phases of the loan and investment business in Des Moines in said years were assessed by the city assessor as "corporation stock" on form No. 1, the same as the assessment of petitioner's stock, and as such approved by the board of review, but said assessments were by the county auditor, long after the final adjournment of the board of review in each of said years, placed upon the tax list as "moneys and credits" (R. 280, 285), and taxed at five mills on the dollar of valuation. The assessments upon such shares of said corporations totaled the following sums:

1919.	1920.	1921.	1922.
$1,822,452.00	$4,984,543.00	$6,813,030.00	$6,685,526.00

Two of these corporations, the shares of which were originally assessed as "corporation stock" but which were subsequently placed on the tax list and taxed at the five-mill rate, were Joint Stock Land Banks, organized under the Act of Congress, engaged in making loans on farm lands within the State of Iowa (R. 258, 259, 350). Fifteen other corporations made, sold and

discounted mortgage loans, secured by liens on Iowa real estate, either farm lands or city property (R. 235-252, inc., 256, 295, 323, 330, 338, 357, 340, 345, 346, 352, 365, 382, 383, 387, 389, 782, 783, 655 to 657, inc.).

Three corporations were engaged in financing public improvement contractors, making advancements to the contractors to enable them to complete their contracts and taking in payment the securities issued by counties or municipalities to the contractors. These securities were then sold to investors (R. 236, 237, 296, 324). Four of such corporations financed dealers in automobiles by the purchase of notes or acceptances, secured by liens on motor vehicles in the possession of the dealer, or in the hands of purchasers (R. 341, 375, 287, 309). Two corporations made loans secured by liens on feeder cattle (R. 780, 338). Eight of the corporations engaged in selling Government, municipal, public utility, and industrial bonds to individual investors and institutions located in Des Moines and elsewhere (R. 236, 296, 323, 340, 382, 783, 404, 305). Some of the corporations made collateral loans, both for their own account and for other investors, and discounted notes and acceptances, secured by liens on household appliances and other personal property (R. 326, 287). Substantially all phases of the loan and investment business were covered by the business operations of these corporations.

In each of said years certain foreign corporations, copartnerships, and individuals operating under trade names in Des Moines, Iowa, engaged in various phases of the loan business, were assessed by the city assessor

on the net amount of money actually used in the business as "moneys and credits" on form No. 2, and such assessments were approved by the Board of Review. After the final adjournment of the Board of Review, such assessments were placed upon the tax list and taxed at five mills on the dollar of valuation by the county auditor. Such assessments were in the total sums of

1919.	1920.	1921.	1922.
$146,263.00	$453,168.00	$278,846.00	$382,072.00

Six of these taxpayers, whose net assessments aggregated approximately $100,000.00 in each of the four years, were engaged in the "small loan" business, which consisted of making loans not exceeding $300.00, secured by chattel mortgages on household furniture and automobiles, most of the loans being payable in installments (R. 321, 623, 732, 693, 319, 691). One of the taxpayers was engaged in the business of making loans on feeder cattle, secured by chattel mortgages (R. 313). Two taxpayers were engaged in financing automobile dealers through the purchase of acceptances or sales contracts, collaterally secured by liens on automobiles in the hands of dealers or in the hands of purchasers (R. 299, 336).

During the four years in question, large numbers of individual taxpayers, residing in the City of Des Moines, held notes representing loans made by the individual secured in some instances by real estate mortgages, or other collateral—in other instances unsecured. Individual taxpayers also held bonds of rail-

roads, public utilities and industrial concerns, representing investments made by the taxpayer. Assessments upon securities of such character were uniformly made on form No. 2 of the assessment roll as "moneys and credits." The good faith indebtedness of the taxpayer was deducted from the gross amount and the net assessment was taxed at five mills on the dollar.

Evidence was introduced showing the character of loans and securities held by individual taxpayers, the net assessments of which totaled:

1919.	1920.	1921.	1922.
$1,422,274.00	$1,768,048.00	$1,587,436.00	$1,783,765.00

The petitioner, during the years in question, carried the accounts of a number of correspondent banks, located in various parts of Iowa and loaned money and handled re-discounts for such correspondents (R. 599). It made loans to automobile dealers in Des Moines and elsewhere in Iowa, secured in some instances by liens on motor vehicles in storage or in transit (R. 600); in other instances, collaterally secured by notes of purchasers of cars. In other instances, loans were made on the open, unsecured note of the dealer. The petitioner made loans to contractors engaged in the construction of public improvements and frequently accepted public improvements bonds or assessment certificates in payment of the advances to the contractors (R. 602). It made first mortgage loans on farm lands in various parts of Iowa, and on Des Moines real estate (R. 602). It made loans to enable

borrowers to purchase and feed cattle for market, secured in some instances by endorsement or by liens on the cattle, in other instances open notes evidenced such loans (R. 603). It re-discounted for correspondent banks, notes of customers, secured by chattel mortgages on cattle (R. 612). It made loans to individuals in amounts of less than $300.00; 564 such loans were made in 1919; 464, in 1920; 642, in 1921; and 692 in 1922 (R. 603). It dealt in United States Government bonds, foreign government and municipal bonds. It sold bonds of S. W. Strauss & Company, and in the years 1921 and 1922 purchased and sold to its customers, industrial, railroad and public utility bonds. It carried on the usual phases of the banking business.

The petitioner offered in evidence excerpts from the annual reports of the Comptroller of the Currency, which disclosed that during the years 1919 to 1922 National Banks in Des Moines, and other cities and towns in Iowa, held substantial amounts of loans secured by mortgages on improved real estate, loans secured by warehouse receipts covering commodities in storage and in transit, and discounted acceptances and commercial paper collaterally secured by liens on merchandise, cattle, stocks, bonds and other personal property. The reports of the Comptroller of the Currency also disclosed that during the four years National Banks in Des Moines, and other cities and towns in Iowa, held large amounts of United States Government bonds and notes, state, county and municipal bonds, railroad, public utility and other public service corporation bonds and industrial bonds (R. 661 to 680, inclusive).

The county auditor, or his deputy under his authority, in making up the tax list in each of the years involved, placed all assessments of stock of domestic corporations engaged in the loan and investment business in Des Moines thereon under the head "Moneys and Credits", and applied thereto a tax at the rate of five mills on the dollar (R. 620). The auditor testified that when he placed the assessments upon the shares of stock of such domestic corporations under the heading "Actual Value Moneys and Credits" he knew it would result in the application of a tax of five mills on the dollar and no more, and he did so with the intention that the taxes would be computed on that basis, and he knew that it would result in a substantially lesser amount of taxes upon such shares than if they were placed upon the tax list and the consolidated levy rate applied; that no shares of stock of such corporation were placed upon the tax list and taxed at the consolidated levy rate; that to the assessed value of such shares the rate of five mills on the dollar was applied by him as county auditor with the intention that the taxes would be so collected by the county treasurer (R. 280); that in so listing such shares of stock he did so under his own interpretation that the statutes of the State gave him the right, as county auditor, to make changes, and after he had taken the subject up with the legal advisers for the board of supervisors and county auditor at the time (R. 281).

With respect to the assessments of the Security Loan & Investment Company for the years 1919 and 1920, he, as county auditor, originally entered the assessed

value of the shares of the said company on the tax list under the column "Taxable Value of Personal", and the tax was computed at the consolidated levy rate. But subsequently he changed such list so as to list such shares as "moneys and credits" subject to a tax at the five-mill levy, and at the time he made such change he knew it would in fact reduce the taxes upon the shares of said company and intended that such change should take such shares from the "high levy" to "moneys and credits" which were taxed at the rate of five mills on the dollar (R. 268). Similar changes were made in the assessments of the Des Moines Joint Stock Land Bank, the Central Iowa Joint Stock Land Bank, and the Des Moines Morris Plan Bank for the year 1921, and for the latter two companies for the year 1922 (R. 269 to 273, inclusive).

Assessments against individuals, non-resident corporations and co-partnerships on account of loans of money or similar credits were all subjected to a tax of but five mills on the dollar. There was no moneyed capital, whether in the hands of individuals or in the form of shares of stock of corporations, that was in fact taxed upon the same basis with the shares of stock in banks and trust companies, *i. e.* at the consolidated levy rate (R. 285).

In the years in question, the Des Moines National Bank, a corporation organized under the national bankings laws, the Bankers Trust Company, and the Iowa Loan and Trust Company, corporations organized under the laws of Iowa, were engaged in the banking business in Des Moines. On January 20, 1923, these

banks filed bills in equity in the United States District Court for the Southern District of Iowa, against the county treasurer of Polk County, Iowa, seeking injunctions against the collection of all taxes upon their shares of stock in excess of five mills on the dollar of assessed valuation (R. 863). On May 5, 1925, a Special Master appointed in said causes filed his report in which he found as follows:

> "CONCLUSION: It is my conclusion that moneyed capital in the hands of individual citizens of this state and living in Des Moines, Iowa, was taxed at five mills on the dollar of actual valuation, and that substantial amounts of such moneyed capital was so taxed during the years 1919, 1920, 1921 and 1922, and that it was the habitual practice of the taxing officers of Polk County to so tax moneyed capital in the hands of individuals, and that it was intentionally so done by them. That the complainants are entitled to relief and that the defendant, or his successor in office, should be enjoined from collecting or attempting to collect taxes from the complainants in excess of a sum computed at five mills on the dollar of the assessed valuation of the shares of stock of each of said complainants for the four years in question, as such sums are set forth in the table in division VII hereof, together with interest upon such sums at the rate of 6% per annum from the date they were payable" (R. 990).

Exceptions were filed to the said report but were overruled, and a decree was entered by said court in

each of said suits perpetually enjoining the collection of taxes upon the said shares at rates in excess of five mills on the dollar (R. 1008 to 1012, inc.). An appeal was prosecuted to the Circuit Court of Appeals for the Eighth Circuit which upon submission affirmed the judgment of the District Court, the opinion of the Circuit Court of Appeals being dated February 28, 1927, and appears on pages 1015 to 1032, inclusive, of the Record. This opinion is reported in 18 Fed. (2d) 269. The board of supervisors of Polk County paid bills for reporters, witnesses, and attorneys' fees, court costs, printing bills, and fees of counsel for appellant in said cause (R. 779).

On November 28, 1923, the petitioner offered to pay the county treasurer the amount of taxes upon the assessed value of its shares for the years in question, computed at the rate of five mills on the dollar, with interest. On November 30, 1923, the petitioner, pursuant to demand of the delinquent tax collector (which included the threat to proceed by distress and sale of petitioner's property for the collection of said taxes and additional penalties), paid taxes and penalties as hereinbefore set forth, under protest, which was entered upon its tax receipts (R. 1039-1040). Petitioner filed with the county auditor its claim for refund of the taxes and penalties so paid, on September 14, 1925, and the board of supervisors on July 15, 1927, denied said claim for refund (R. 595). The county treasurer, after the filing of the petitioner's claim, remitted funds to the Treasurer of State, to the City Treasurer of Des Moines, to the Treasurer of the Independent School

District, and also retained funds for county purposes in the following amounts:

Year.	To Treasurer of State.	City Treasurer.	School Treasurer.	County.
1926	$502,103.00	$2,724,250	$2,972,351	$1,333,597
1927 (11 mo.).	488,715.00	2,7[illegible]33	2,880,859	1,171,223
(R. 738.)				

And the amount of money to be collected in Des Moines in 1928, as shown by the tax lists at the time of the trial was:

State	$424,295
County	1,197,457
City	2,737,872
School	3,038,901
Soldiers' Bonus (State)	32,003
Moneys and Credits	160,019
(R. 862.)	

The action was tried in the District Court of Polk County, Iowa, which rendered a decree denying to the petitioner the relief sought without findings of fact or of law, and without an opinion by the presiding judge; petitioner perfected an appeal to the Supreme Court of the State of Iowa. Said Court on September 26, 1930, rendered its opinion and entered its order confirming the judgment of the District Court (R. 1900), (232 N. W. 445). By said opinion, which was concurred in by five members of the Court, four members dissenting and filing a dissenting opinion (R. 1917), it was held that although under the statutes of Iowa the method of assessment and taxation of the shares of stock of petitioner was clearly defined and mandatory upon the taxing officials, nevertheless as to the large number

of individuals and corporations owning moneyed capital in a substantial amount which was in fact assessed and taxed as "moneys and credits" at five mills upon the dollar of actual valuation, while the shares of stock of petitioner were taxed at from five to seven times such rate, petitioner's remedy was solely by appeal from the action of the assessing bodies. That as to corporations in competition with petitioner in the said taxing district in the said years, whose shares of stock were assessed as "corporation stock" or moneyed capital, but whose assessments were changed by the county auditor to "moneys and credits", and thereby subjected to a tax at only five mills on the dollar (whereas the shares of stock of petitioner were taxed at from five to seven times such rate), the petitioner was not entitled to relief because the county auditor acted unlawfully in making such change, and although under the statutes of the State of Iowa he was the only official to whom there was remitted the power of making the tax lists, and although he acted under advice of counsel for the board of supervisors of Polk County, and although he acted intentionally and as a result of a system, his acts being so unlawful were not binding upon the State and its political subdivisions, and in so doing he was a mere usurper of authority. The Iowa Supreme Court also held that the decision of the Circuit Court of Appeals of the United States, although final, and although upon a Federal question, was not controlling upon the courts of the State of Iowa, although they should give respectful consideration to such decision.

On December 8, 1930, petitioner presented to Justice Butler of this Court its motion for an extension of time within which to file petition for writ of certiorari, and on that date he entered an order extending such time for a period of sixty days therefrom.

Reasons Relied on for Allowance of the Writ.

1. This is a cause wherein a final judgment has been rendered or passed by the highest court of the State of Iowa, by which the validity of the statutes of Iowa, as administered by the officers and agents of said state, is drawn in question on the ground of the statutes being, as so administered, repugnant to Section I of the Fourteenth Amendment to the Constitution of the United States, and the administration thereof deprived the petitioner of the equal protection of the law.

2. This is a cause wherein a final judgment has been rendered or passed by the highest court of the State of Iowa, wherein a right or privilege is specially set up and claimed by the petitioner under the Fourteenth Amendment to the Constitution of the United States and the judgment erroneously denies the petitioner such right or privilege.

3. The Supreme Court of the State of Iowa, being the highest court of said State in which a decision could be had, has decided a federal question of substance in a way not in accord with applicable decisions of this Court, including the cases of First National Bank of Hartford *v.* Hartford, 273 U. S. 548; Minnesota *v.* First National Bank of St. Paul, 273 U. S. 561;

Cummings *v.* Merchants National Bank, 101 U. S. 151; Reagan *v.* Farmers Loan & Trust Co., 154 U. S. 364; Carpenter *v.* Shaw, 280 U. S. 363; Montana National Bank *v.* Yellowstone County, 276 U. S. 499; Ward *v.* Love County, 253 U. S. 17.

4. The Supreme Court of the State of Iowa, being the highest court of said State in which a decision could be had, has decided a federal question of substance in conflict with the decision of the United States Circuit Court of Appeals for the Eighth Circuit involving the same questions and the same facts, being the case of Munn, Treasurer *v.* Des Moines National Bank, and two other cases, 18 Fed. (2d) 269.

5. The Supreme Court of Iowa, being the highest Court of the State in which a decision could be had, has decided important questions of general law in a way untenable and in conflict with the weight of authority and has thereby deprived the petitioner of rights arising under the Fourteenth Amendment to the Constitution of the United States, in that the Supreme Court of Iowa ruled that the State was not bound by the acts of its duly constituted officers in administering the laws and statutes of the state so as to work a trespass upon the rights of the petitioner and to deprive the petitioner of the equal protection of the law, in violation of the Fourteenth Amendment to the Constitution of the United States.

6. The decision and judgment of the Supreme Court of Iowa, being the highest court of said State in which a decision in said cause could be had, denies to petitioner the equal protection of the law, contrary to the

Fourteenth Amendment to the Constitution of the United States, in that in the administration of the statutes of Iowa by officers of the State and its political subdivisions there was an intentional, systematic, general, and habitual method or plan of taxation whereby large and substantial amounts of other moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States were taxed at from one-fifth to one-seventh as much as the taxes imposed upon the assessed value of the shares of petitioner.

7. The decision and judgment of the Supreme Court of Iowa, being the highest court of said state in which a decision could be had, denies to petitioner the right to have its shares taxed at the uniform rate imposed upon other moneyed capital in the hands of individual citizens. The record affirmatively discloses that the denial of such right was the result of a deliberate, intentional, systematic and habitual plan in the administration of the taxing laws of Iowa, and the acts of the taxing officers therefore deprive the petitioner of rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Specification of Errors.

Your petitioner further shows that the final decision and judgment of the Supreme Court of Iowa, affirming the judgment of the District Court of Polk County, Iowa, is erroneous in the following respects:

a. Because the said decision and judgment of the Supreme Court of Iowa denies to petitioner the equal

protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, in that in the administration of the statutes of Iowa by officers of the State and its political subdivisions there was an intentional, systematic, general, and habitual method or plan of taxation whereby large and substantial amounts of other moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States were taxed at rates from one-fifth to one-seventh as much as the taxes imposed upon the assessed value of the shares of the petitioner.

b. Because by said decision and judgment the said Supreme Court of Iowa held that there was no intentional, systematic, general, and habitual method or plan of taxation in the administration of the statutes of Iowa by officers of the State and its political subdivisions whereby large and substantial amounts of other moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States were taxed at rates of from one-fifth to one-seventh as much as the taxes imposed upon the assessed value of the shares of petitioner.

c. Because by said decision and judgment the Supreme Court of Iowa held that the acts of the county auditor in making the tax list, or in making changes in the tax list so as to subject the shares of stock of competing corporations to a tax from one-fifth to one-seventh as much as the tax to which petitioner's shares were subjected were illegal and void acts of a merely ministerial or clerical officer, were a mere nullity, were the result of usurped authority, and were not the acts

of the State taken through its duly constituted officers, and were not binding upon it.

d. Because the said decision and judgment of the Supreme Court of Iowa held that the State and all of its authorized officials "have acted in the utmost good faith and in accordance with the constitutional and statutory rights of petitioner."

e. Because by said decision and judgment the Supreme Court of Iowa held that there was no discrimination in the levy or assessment as between the petitioner and competing corporations and that the State had not knowingly and wilfully discriminated in the collection of taxes.

f. Because the said decision and judgment of the Supreme Court of Iowa denied to petitioner its rights arising under the Fourteenth Amendment to the Federal Constitution and Section 5219 of the Revised Statutes of the United States upon the ground, in part, that it did not appear that the illegal acts of the county auditor were ever called to the attention of the board of supervisors, the executive council, the department of justice, the legislature, or any of the authorities of the State who had any power of supervision or duty to enforce correction of the misfeasances of the county auditor or county treasurer.

g. Because the decision and judgment of the Supreme Court of Iowa held that it was not bound by the decision of the Circuit Court of Appeals for the Eighth Judicial Circuit in Munn *v.* Des Moines National Bank, and Munn *v.* Bankers Trust Company, 18 Fed. (2)

269, which decision became final, and which decision was of the identical questions and upon the identical facts involved in this case and constituted an adjudication binding upon respondents.

h. Because said decision and judgment of the Supreme Court of Iowa held that as to other moneyed capital in the hands of individuals and foreign corporations assessed by the assessor, reported by him to the board of review, approved by that board, entered upon the tax books, and so returned to the county auditor as "moneys and credits" and subjected to taxes at five mills on the dollar of assessed valuation, petitioner had an available remedy by appeal from the board of review, and that such remedy was exclusive.

A certified copy of the entire record in said suit, including the record and proceedings and papers filed or had in the Supreme Court of the State of Iowa, is herewith furnished, attached to, and made a part of this petition, in compliance with Rule 38 of the Rules of this Court.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Iowa, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all the proceedings in the case numbered and entitled on its docket No. 39844, Central State Bank, Appellant, *v.* J. M. Stewart *et al.*, Appellees, and that the said decree and judgment of the Supreme Court of Iowa may be reversed

by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just. And your petitioner will ever pray.

CENTRAL STATE BANK,
By J. G. GAMBLE,
A. B. HOWLAND,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No.

CENTRAL STATE BANK, PETITIONER,

v.

J. M. STEWART ET AL., RESPONDENTS.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinion of the Court Below.

The opinion of the Supreme Court of Iowa has not been officially reported. It was rendered on September 26, 1930, and appears in the Record beginning at page 1900. It has been reported in 232 N. W. 445.

II.

Jurisdiction.

1. The jurisdiction of this Court is sustained by Judicial Code Section 237 as amended by the Act of February 13, 1925, 43 Stat. 938.

2. The date of the judgment to be reviewed is September 26, 1930 (R. 1960). Application for extension

of time within which petition for a writ of certiorari might be filed in this cause was made to Justice Butler on December 8, 1930, and an order extending such time for sixty days from and after December 8, 1930, was on that date granted by Justice Butler (R. 1967).

3. There has already been stated in the preceding petition under "Summary Statement of the Matter Involved" and "Reasons Relied on for the Allowance of the Writ" (pp. 1, 21) the nature of the case and the rulings below which were such as to bring the case within the jurisdictional provision relied on, and the same are hereby adopted and made part of this Brief.

4. The cases believed to sustain said jurisdiction are as follows:

First Nat. Bank of Hartford *v.* Hartford, 273 U. S. 548.

Minn. *v.* First Nat. Bank of St. Paul, 273 U. S. 561.

Cummins *v.* Merchants Nat. Bank, 101 U. S. 151.

Green *v.* L. & I. Ry. Co., 244 U. S. 499.

Reagan *v.* Farmers Loan & Trust Co., 154 U. S. 364.

Carpenter *v.* Shaw, 280 U. S. 363.

Montana Nat. Bank *v.* Yellowstone County, 276 U. S. 499.

Ward *v.* Love County, 253 U. S. 17.

III.

Statement of the Case.

This has already been stated in the preceding petition under "Summary Statement of the Matter In-

volved" (p. 1), which is hereby adopted and made part of this Brief.

IV.

Specification of Errors.

Specification of Errors (*a*) to (*i*), inclusive, have been set forth in the preceding petition (p. 23), and are hereby adopted and made part of this Brief.

V.

Summary of the Argument.

The Fourteenth Amendment to the Constitution of the United States protects taxpayers of a state against systematic, intentional and arbitrary action on the part of officers of a state, or its political subdivisions, in the administration of the taxing laws of the state. The decision below is contrary to and in conflict with the decisions of this and other Federal courts.

The decision of the Iowa Supreme Court that the State, and its subdivisions were not bound by the Acts of the County Auditor of Polk County, in the performance of duties enjoined upon him by statute, is clearly untenable and will not support a denial of rights arising under and guaranteed by the Fourteenth Amendment of the Constitution of the United States.

The decision of the Iowa Supreme Court that petitioner's exclusive remedy, as to the moneyed capital

assessed by the assessor as "moneys and credits" and taxed at five mills on the dollar, was by appearance before and appeal from the Board of Review is untenable, and denies petitioner the equal protection of the law in violation of the Fourteenth Amendment.

ARGUMENT.

By a Five to Four Decision, the Supreme Court of Iowa Has Denied to the Petitioner Substantial Rights Arising Under and Guaranteed it by the Fourteenth Amendment to the Constitution of the United States.

Under the State and Federal constitutions, the legislature of Iowa had the undoubted power of making reasonable classifications of property for taxing purposes. The Legislature of the State exercised this power by the enactment of Sections 1310, 1322 and 1322-1*a*, Code Supplement of 1913, and placed shares of stock in national and state banks, loan and trust companies and "all moneyed capital within the meaning of Section 5219 of the Revised Statutes of the United States" in one class. The Legislature directed that all property in the class should be taxed at a uniform rate, *i. e.*, the consolidated levy rate applied to twenty per cent of the assessed actual value of the shares or the moneyed capital. The State, by these statutes, has adopted and made a part of the law of Iowa, the classification made by the Congress of the United States as to national banks in Section 5219 of the Revised Statutes.

Notwithstanding the classification made by these statutes requiring uniformity in the taxation upon the

shares of national banks, state banks, loan and trust companies, and "moneyed capital," the record establishes in great detail that in each of the years in question, relatively large and material amounts of moneyed capital were deliberately, intentionally, systematically and habitually taxed at rates from one-fifth to one-seventh the rates imposed upon the shares of the petitioner.

Indeed, the majority opinion of the Supreme Court of Iowa recognizes and concedes that in each of the years involved in this case, there were in the City of Des Moines, a large number of domestic corporations employing moneyed capital in direct competition with the petitioner, the shares of which corporations constituted "other moneyed capital," and a large number of persons and a few foreign corporations and copartnerships, which were employing moneyed capital, and all of this moneyed capital was taxed at the rate of five mills on the dollar of actual valuation as "moneys and credits."

This moneyed capital to which we have referred was by the majority opinion of the Iowa Supreme Court placed in two classes:

(*a*) Competing capital represented by shares of domestic corporations, the assessments upon which were made by the assessor, approved by the Board of Review, entered upon the assessor's books and returned to the county auditor as "corporation stock" identical in form with the assessments upon the shares of the petitioner. The discrimination with respect to these

shares resulted from the subsequent acts of the county auditor in placing the assessments upon the tax list as "moneys and credits" and applying thereto the five mill rate.

(*b*) Competing capital in the form of notes, bonds, mortgages and other evidences of indebtedness in the hands of individuals, co-partnerships and foreign corporations, the assessments of which were made as "moneys and credits" approved by the Board of Review, entered upon the tax books and the five mill rate applied thereto.

We desire to consider the questions presented in the light of the assessments of these classes of competing capital in the order stated.

(*a*) In each of the years involved, petitioner, as required by statute, made sworn statements to the assessor for the assessment of its shares of stock. The assessor assessed such shares as "corporation stock," made up the assessment rolls accordingly, fixing the value on the basis of the sworn statements. This assessment was approved by the board of review, and the assessor's books were made up and returned to the county auditor in conformity with the sworn statements and assessment rolls. The county auditor so entered them upon the tax books, fixing the taxable value at twenty per cent of the actual value, and applied to such taxable value the consolidated levy for the respective years, which varied from 137.8 to 164 mills.

In so doing, the assessor, board of review, and the county auditor performed purely ministerial acts imposed by mandatory statute. As said by the Supreme Court of Iowa in First National Bank of Remsen *v.* Hayes, County Auditor, 186 Iowa, 892:

> "Enough has been said to indicate that the duty performed by the assessor in ascertaining the value of bank stock is merely ministerial in its nature. All exacted of him is accurate computation. In estimating the value of other property, he is required to determine its value according to his best judgment, and therein exercises a quasi-judicial function. See Talley *v.* Brown, 146 Iowa, 360. A ministerial act has been defined as 'one which a person or board performs upon a given state of facts, in a prescribed manner, in observance of the mandate of legal authority, and without regard to or the exercise of his own judgment upon the propriety of the act being done.' . . .
>
> "Here, the assessor is merely required to make computation from the statements furnished him, and must have, in the performance of his duty as assessor, assessed the shares of stock in the bank in accordance with computations actually made, and therein performed purely ministerial duties, and he should have assessed the bank stock in accordance with such computation. Whether he made a mistake in computation or undertook to exercise his judgment in ascertaining the value of the shares of stock is not material. In either event, the error in the assessment was such as contemplated in Section 1385-*b* of the Code Supplement, 1913,

and the auditor acted within his authority in making the corrections."

See also Security Savings Bank *v.* Board of Review, 189 Iowa 463; Avoca State Bank *v.* Burke, County Auditor, 193 Iowa 1055.

During these same years a large number of domestic corporations employing the competing capital included in this class made like sworn statements to the assessor, who used the same classification and assessment, and made up and returned to the county auditor the assessment rolls and the assessor's books in indentically the same form, and on the same basis as in the case of petitioner's stock.

Either before or after the tax books made by the county auditor had passed into the hands of the treasurer, but before payment of the taxes, the county auditor made entries therein so that the assessments against such competing capital were extended on the tax books as "moneys and credits," and applied thereto the five-mill levy on the dollar of actual valuation, under Section 1310, Code Supplement 1913, instead of the application of the consolidated levy upon 20 per cent of the valuation, as was done in the case of petitioner, and this resulted in a much larger tax upon petitioner than upon such competing capital.

"The tax law as it leaves the legislative hands may not be obnoxious to any challenge, and yet the officers charged with the administration of that valid tax law may so act under it in the matter of assessment or collection as to work

an illegal trespass upon the property rights of the individual."

Reagan *v.* Farmers Loan and Trust Company, 154 U. S. 362 at 390; Chicago and Northwestern Railway Company *v.* Osborne, 265 U. S. 14; Sioux City Bridge Company *v.* Dakota County, 260 U. S. 441; Munn *v.* Des Moines National Bank, *supra.*

In Cummings *v.* Merchants National Bank, 101 U. S. 153, this Court said:

> "Independently of this Statute (5219 R. S.), however, we are of opinion that when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power."

In Sunday Lake Iron Co. *v.* Wakefield, 247 U. S. 350, it is said:

> "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other tax-

able property in the same class contravenes the constitutional right of one taxed upon the full value of his property.''

The act of the county auditor and his deputy in placing the assessments on the shares of domestic corporations, employing capital in competition with petitioner, upon the tax list as ''moneys and credits'' and thereby subjecting such competing capital to rates of taxation much less than those imposed upon the shares of petitioner was an unlawful change of classification by the auditor. Ft. Madison Security Company *v.* Maxwell, et al., 202 Iowa, 1346.

Thus by the act of the auditor, a public official charged with the duty of preparing the tax list showing the amounts of taxes to be collected by the Treasurer, the shares of petitioner have been subjected to a clear discrimination when compared to the taxes imposed upon a relatively material part of ''other moneyed capital,'' as that term is defined by Section 5219 of the Revised Statutes, as construed by this court in First National Bank of Hartford *v.* City of Hartford, 273 U. S. 548; Minnesota *v.* First National Bank of St. Paul, 273 U. S. 561; Merchants National Bank of Richmond *v.* Richmond, 256 U. S. 635; Munn, County Treasurer *v.* Des Moines National Bank and Munn, County Treasurer *v.* Bankers Trust Company, 18 Fed. (2d) 269. The last two cases involved alleged discrimination in taxation against the shares of state and national banks and in favor of ''other moneyed capital,'' in the same taxing district, in the same years involved in this case. Injunctions were

issued in those cases enjoining the collection of taxes upon bank shares in excess of the five mill rate, and the decision became final, since no effort was made to have it reviewed by this court. See 18 Fed. (2d) 269.

That the auditor, in making these changes in the tax list so as to subject the shares of petitioner to a clear discrimination, acted intentionally, systematically and with the purpose of bringing about the taxation of such other moneyed capital at grossly favorable rates, is abundantly established by the record. This is shown by the direct admissions of the county auditor who repeatedly testified, both on direct and cross examination, that he intended to subject the petitioner's shares to taxation at the consolidated levy rate applied to 20% of the assessed value, and the shares of other corporations engaged in the loan and investment business to taxation at the five mill rate. It is undisputed that this action was taken after the auditor had the benefit of the advice of legal counsel for the County Board of Supervisors. In the four years involved the auditor testified that there was no capital in the county taxed at rates as high as those imposed upon petitioner's shares "except the capital of other banks." Thus there is undoubted support for the statement of the four justices of the Iowa Supreme Court who concurred in the dissenting opinion, in which it was said:

> "It is shown by the record that the capital of national banks in the city of Des Moines during the years in question was about three million dollars, while that of state banks was

from four and one-half to six million dollars. The assessments upon the shares of stock found from the evidence to be competing institutions during said years, varied from about one and one-half millions in 1919 to an excess of five millions in 1922, and, under the rule laid down by the italicized portion of First National Bank of Hartford *v.* City of Hartford, supra, there has been a clear violation of Section 5219 of the Revised Statutes of the United States.

The action, hereinbefore mentioned, of the county auditor was intentionally done. It applied to all of the assessments upon the shares of stock of the competing corporations. Therefore, within the meaning of the authorities from which quotations are hereinbefore given, to wit, Reagan *v.* Farmers Loan & Trust Company, 154 U. S. 362, 14 S. Ct. 1047, 38 L. Ed. 1014; Sioux City Bridge Company v. Dakota County, 260 U. S. 441, 43 S. Ct. 190, 67 L. Ed. 340, 28 A. L. R. 979; Cummings *v.* Merchants National Bank of Toledo, 101 U. S. 153, 25 L. Ed. 903; Raymond *v.* Chicago Union Traction Company, 207 U. S. 20, 28 S. Ct. 7, 52 L. Ed. 78, 12 Ann. Cas. 757, and the other cases cited in connection therewith, an illegal discrimination has been worked against the appellant national banks and their shareholders by systematic, intentional, wrongful and arbitrary administration of the law. In order for the appellant national banks to be entitled to relief, it is not a prerequisite that the action of the county auditor was done with intent to injure said banks. See Taylor *v.* L. & N. R. Co. (C. C. A.) 88 F. 350."

Indeed, the majority opinion of the Supreme Court of Iowa in this case recognizes the existence of this

clear discrimination against petitioner's shares in favor of a relatively material amount of other moneyed capital within the meaning of the Revised Statutes, but undertakes to avoid the application of the holdings of this and other federal courts to like cases, and denies to petitioner the recovery of the taxes so illegally exacted from it because it is said that the acts of the county auditor were illegal and void acts of a merely ministerial, or clerical officer or employe, and the result was not one of bad faith, intent, or willfulness on the part of those who as its duly constituted officers represented the state; that the auditor's acts in making the tax list or in making changes in the tax list so as to subject the shares of stock of such competing corporations to a tax so much less than the tax to which the shares of petitioner were subjected were a mere nullity, and that the auditor was merely usurping authority and therefore his acts were not the acts of the state taken through its duly constituted officers, and were not binding upon it.

Such holding was but a declaration of general law concerning the powers of the county auditor and is wholly untenable for the following reasons: It was provided by Section 1072, Code of Iowa Supplement, 1913, that "there shall be elected in each county at general election in 1906 and in each even-numbered year thereafter an auditor * * * who shall hold office for the term of two years or until their successors are elected and qualified." The county auditor is required by statute on or before the first day of January in each year to transcribe the assessments of

the several townships, towns, and cities into a book to be provided at the expense of the county for that purpose, to be known as the tax list, properly ruled and headed with distinct columns in which shall be entered the names of the taxpayers, description of lands, number of acres and value, number of town lots and value, value of personal property, and each description of tax, with a column for polls and one for payments, and shall complete the same by carrying out the totals and footings of columns. Code of Iowa, Supplement 1913, Section 1383. The county auditor is required, before the 31st day of December of each year, to deliver the tax list to the county treasurer, and such list shall be sufficient authority for the treasurer to collect the taxes therein levied. Code of Iowa 1897, Section 1387. The county auditor may correct any error in the assessment or tax list, or may assess and list for taxation any omitted property. Code of Iowa, Supplement 1913, Section 1385-*b*. All taxing districts in the state, including townships, school districts, cities, towns, and counties, are required to certify to the county auditor the money needs of the district, and the rate of taxation shall be based upon the adjusted taxable valuation of such taxing district for the preceding year, and shall be computed and spread upon the records by the county auditor, and spread upon the tax list in his office. Chapter 343, Laws 37th G. A. The county treasurer is required by statute to collect the taxes, and the list shall be his authority and justification against any illegality in the proceedings prior to receiving the list. Code of Iowa 1897, Section 1390.

Neither the local assessor nor the board of review have any duty to perform under the statutes of Iowa with respect to the quantity of the tax to be applied against the value of the property assessed by them. Their function is one of valuation. Nor does the county treasurer have any duty to perform with respect to the quantity of the tax to be applied against the assessed value of the property. His duty is one of collection. The basic factors which result in the fixation of the rate of tax applied against assessed valuations come either from taxing districts or statutes of the state, and all are required to be reported to and computed by the county auditor, whose duty it is to make the tax list, which constitutes the tax bill which is the foundation of the tax lien, and which imposes, once it is lodged in the hands of the county treasurer, the obligation of payment from the taxpayer. If error creeps into the tax list, either as a result of inadvertence or intention, the law imposes the duty of correction upon the county auditor. The treasurer has no authority to correct an error in the tax list, but is required to give receipt to taxpayers upon the tender of the amount shown by the tax list, and is required to furnish to the taxpayers the charge against them reflected by the tax list. Code of Iowa 1897, Sections 1396-7.

The mere assessment of values imposes no tax. The collection of tax payments is an act which can only be consummated after the imposition of a tax. Taxes are imposed by law, but the law in Iowa remits to the county auditor the application of the levy to the values,

and he is the only agent of the state or any of its political subdivisions invested by law with authority to impose the ultimate amount upon the taxpayer which represents his due proportion of the cost of government. It is an essential step in the fixation of tax liability in Iowa that the county auditor prepare the tax list. Perhaps he has no duty imposed upon him by law so important and so far-reaching in its effect as this duty. To say that he is not a duly constituted agent of the state and its political subdivisions in connection with the imposition of taxes such as involved in this case is to deny the express and unequivocal language employed by the legislature of the state in erecting the machinery for the exaction of the funds necessary for conducting the business of the government.

Indeed, the Supreme Court of Iowa in its prior decisions has recognized the county auditor as a duly constituted agent of the state and its political subdivisions in connection with the imposition of taxes, and awarded relief where the county auditor in the performance of such duties acted illegally. In Northwestern Bank of Ireton *v.* Van Roekel, 202 Iowa 237, the court had under consideration the action of the county auditor in increasing the assessment of the Northwestern Bank, a private bank, by the sum of $50,000. It held that the auditor in increasing the assessment departed from the objective of the legislature of the state to obtain substantial uniformity in the method of assessing state, national and private banks, and affirmed the judgment of the district court

setting aside such additional assessment made by the county auditor. Involved in the case was the question of the taxation of costs, and in considering that portion of the district court's judgment which taxed the costs of the proceeding to the county auditor, the court said:

> "We do not think that the costs should have been taxed against the auditor personally. *He acted officially and in good faith, and under the advice of counsel.*" (Italics ours.)

And the Supreme Court of Iowa in Fort Madison Security Company *v.* Maxwell, 202 Iowa 1346, held that the county auditor of Lee County acted illegally and beyond his power in listing upon the tax list the shares of stock of the Fort Madison Security Company as "moneyed capital" when such shares had been assessed by the assessor as "moneys and credits", and awarded relief to the Fort Madison Security Company by reason of the illegal and unauthorized act of the county auditor.

Furthermore, the Supreme Court of Iowa in the cases of First National Bank of Remsen *v.* Hayes, *supra,* and Avoca State Bank *v.* Burke, *supra,* clearly recognized the acts of the county auditor as acts of a duly constituted agent of the state and its political subdivisions, because it affirmed the imposition of additional taxes by reason of the acts of the county auditor.

The Iowa court, however, further predicated its denial of relief to petitioner, in part upon the state-

ment that petitioner was the acting party and that it did not appear from the record that the illegal acts of the auditor were ever called to the attention of the board of supervisors, the executive council, the department of justice, the legislature, or any of the authorities of the state who had any power of supervision or duty to enforce correction of the misfeasances of the county auditor or the county treasurer. There is no statutory provision in Iowa imposing any obligation upon petitioner to call to the attention of the parties referred to the illegal acts of the auditor, unless it arises under the statute relating to the refund of taxes, where the action of the board of supervisors is required to be invoked. The petitioner fully complied with this provision, since the illegal acts of the auditor were repeatedly, and at great length set forth in the claim filed with the board of supervisors, and the illegality of the taxes demanded and exacted by the county treasurer from petitioner was further called to the attention of the county treasurer in the protest filed with him at the time of the payment of such taxes and penalties. Furthermore, the county auditor is shown by the record to have consulted the legal advisers for the board of supervisors and himself at the time of making the entries on the tax list resulting in the discriminatory taxation. There is no provision of law which invests the executive council of the State of Iowa with any jurisdiction over the acts of the county auditor, and there is no means provided by law through which petitioner could have appealed to the legislature in this connection.

This effort on the part of the Supreme Court of Iowa, as reflected by the majority decision, to deprive petitioner of its legal right to recover money unlawfully exacted from it by a discriminating tax on its shares, made after the tax was exacted still leaves the money illegally exacted in the treasury of the state and its political subdivisions, and will not be permitted to preclude the right of recovery by petitioner. Montana National Bank *v.* Yellowstone County, 276 U. S. 449.

Moreover, since by virtue of the facts disclosed in the record the petitioner's shares have been taxed at a greater rate than other moneyed capital, there was the assertion and proof of the existence of a federal right, and whether this federal right was denied or not given due recognition creates in itself a federal question, and, as said by this Court in Carpenter *v.* Shaw, 280 U. S. 363, the denial by a state court of a recovery of taxes exacted in violation of the laws or Constitution of the United States by compulsion is in itself a contravention of the Fourteenth Amendment.

In this record it is conclusively shown that not only were the original taxes exacted of petitioner under compulsion, but that in addition, interest and penalties in the enormous sum of $12,198.28 were demanded and paid under the threats of the imposition of additional penalties and also of the seizure by distress and sale of the property of petitioner. Under such circumstances, as said in Ward *v.* Love County, 253 U. S. 17, "No statutory authority was essential to enable or require the county to refund the money." Although,

by the terms of Section 1417 of the Code of Iowa, 1897 it was provided:

> "The Board of Supervisors shall direct the treasurer to refund to the taxpayer any tax or portion thereof found to have been erroneously or illegally exacted or paid, with all interest and cost actually paid thereon."

And the Supreme Court of Iowa in Steele *v.* Madison County, 198 Iowa 902, had held that the proper procedure to enforce rights under this statute is by mandamus to compel the board of supervisors to order a refund thereof. See also Murphy *v.* Berry, 200 Iowa 974; Fort Madison Security Company *v.* Maxwell *et al.*, 202 Iowa 1346; Commercial National Bank *v.* Board of Supervisors, 168 Iowa 501.

(*b*) In each of the years involved there were in the City of Des Moines a large number of persons, and a few foreign corporations, who were employing moneyed capital in competition with petitioner. The assessor classified and assessed this competing capital as moneys and credits. He made up the assessment rolls and assessor's books accordingly, and returned them to the county auditor. The county auditor extended these assessments upon the tax books as moneys and credits, and applied to them the five mill levy upon the net valuation, which resulted in a much lesser tax than if said moneyed capital had been subjected to taxation at the same rate as that imposed upon petitioner's shares. After making the assessments of moneyed capital, the assessor submitted the same to and they were approved by the board of review, which

was composed of the city council of the City of Des Moines.

Although admitting the existence of a clear discrimination in connection with the taxation of such moneyed capital, the Supreme Court of Iowa denied to petitioner a recovery for the reason that under its holding petitioner was required to appear before the board of review and object to the discriminatory assessment of such moneyed capital in the hands of such large number of persons and foreign corporations, and to appeal from the action of the board of review to the District Court of Iowa. It was held that this was the exclusive remedy afforded to petitioner by the statutes of Iowa. Complaint as to the assessment of petitioner's shares would have availed nothing, because as we have heretofore pointed out, the assessor and the board of review performed only ministerial duties under a mandatory statute, and in so far as the assessment of petitioner's shares was concerned, were limited merely to the computation of the value of such shares based upon the sworn statements required to be furnished by petitioner.

The record shows that the moneyed capital included in this class was held by several hundreds of persons, and the amount thereof in the aggregate was several millions of dollars. The time fixed by the statutes for a taxpayer to make complaint before the board of review was only a few days, and the Supreme Court of Iowa had held that the taxpayer coming before the board of review for relief must state his grievance

"with sufficient particularity and must specify his complaint with such certainty to enable the tribunal supposing it to possess ordinary intelligence, to comprehend and understand the matters of which complaint is made, and to grant the particular relief sought for in the complaint. He is not entitled to have any question determined on appeal except such as he called the tribunal to determine in the first place". *First National Bank v. City of Council Bluffs,* 182 Iowa 107.

The complaint must present the alleged errors "with such facts as may lead to their correction". The city council of Des Moines was not a judicial body. The competitors of petitioner who had escaped four-fifths to five-sixths of the taxes they should have paid, and their employees, were not very likely to volunteer testimony or evidence to sustain the claims of petitioner, and the city council had no power to issue subpœnas to compel them to testify. It was neither practical nor possible for the shareholders of petitioner to have searched out, learned, and stated to the city council within the times required by statute, the errors of which they complained, with such facts as may lead to their correction—much less to have had the city council so determine the question. As stated by Circuit Judge Sanborn in *Munn v. Des Moines National Bank, supra:*

> "In our opinion the facts of these cases, some of which have now been recited, clearly except them from the operation of the proposition that they must exhaust their remedy before the administrative board, because that remedy was not only inadequate but necessarily impractical and

futile, and the Court below had plenary jurisdiction in equity to hear and decide the questions in these cases and to grant adequate relief to complainants."

Furthermore, this Court in Sioux City Bridge Co. *v.* Dakota County, *supra,* which involved the taxation of the property of petitioner in that case by the State of Nebraska on a basis that denied the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, and in answer to the holding of the Supreme Court of Nebraska that the petitioner had no remedy except "to have the property assessed below its true value raised rather than to have property assessed at its true value reduced", said:

> "The conclusion in these and other Federal authorities is that such a result as that reached by the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all, because it is utterly impossible for him by any judicial proceeding to secure an increase in the assessment of the great mass of under-assessed property in the taxing district."

See also *Green v. L. & I. Ry. Co.,* 244 U. S. 499; *Taylor v. L. & N. Ry. Co.,* 88 Fed. 350.

And so we say that the holding of the Supreme Court of Iowa in this case in this respect is the equivalent of a denial to the petitioner of any remedy at all, and where, as here, there is involved a recovery of taxes exacted in violation of the law or Constitution of the United States by compulsion, it, as said by this Court

in *Ward v. Love County, supra,* requires no statutory authority as an essential to enable or require the county to refund the money. See also *Carpenter v. Shaw, supra.*

In the majority opinion of the Supreme Court of Iowa it is said "it is only by inference that it can be said that the domestic corporations so owning and employing the competing moneyed capital admitted to have existed in the taxing district of Des Moines in the years involved have paid taxes only in accordance with the changes made by the auditor." But this statement is not sustained by the record. The tax lists for each of the years involved were in evidence. The statutes required the county auditor in the preparation of the tax lists to provide a separate column showing the date of payment. Page 383 of Exhibit 261, being the tax list for 1919, is reproduced in the record as a typical example of the tax list, and shows the payment by the Security Loan and Investment Company of taxes computed on the five-mill basis on March 31, 1920, and on September 30, 1920, and the payment by Jesse F. Stevenson Company of taxes computed on the five-mill basis on the same dates. E. R. Bennett, one of the respondents in the case, and who was county treasurer at the time of payment testified that he had instructed his deputies and clerks to accept money for taxes as shown by the tax books whenever the amount offered was the amount shown to be due by the tax lists. The county auditor testified that when he made the tax lists, and placed thereon the shares of such corporations employing competing moneyed capital, he did so

with the intention that the taxes would be so collected at the five-mill levy by the county treasurer's office, and that there were no assessments on the shares of stock of any corporation in the city of Des Moines during the years 1919 to 1922, other than the shares of banks and trust companies which were taxed at a rate in excess of five mills on the dollar, nor was there any moneyed capital, whether in the hands of individuals or in the form of shares of stock of corporations, that was in fact taxed on the same basis with the shares of stock in banks and trust companies. We have heretofore pointed out that under the statutory provisions in effect at the times involved in this suit, the county treasurer was required by statute to collect the taxes as entered upon the tax lists, and the tax lists constituted his authority for such collection. And so, we say that the statement in the majority opinion of said Court is not sustained by the record.

It is true, of course, that there could be, as a result of system and design, a discrimination in the collection of taxes which would fall within the prohibitions contained in Section 5219 of the Revised Statutes of the United States, and the Fourteenth Amendment to the Constitution of the United States. But it is not true that such illegal discrimination can only result from an intentional and systematic failure on the part of the state and its political subdivisions to ultimately collect taxes from all taxpayers in the same class at the same rates. The prohibition upon the power of the state contained in the Fourteenth Amendment to the Constitution relates to the imposition of

taxes as the result of an intentional, systematic, habitual, and arbitrary action of the officials of the state and its subdivisions. This discrimination results when the state or its agents are authorized to demand the sums of money as taxes pursuant to the preparation of the tax bills in accordance with the methods prescribed by statute. And that is just what happened at the time the county auditor in each of these years lodged the tax lists with the county treasurer, because without any further action on the part of any agent of the state or its political subdivisions the amounts shown on the tax lists became charges and liens, if not paid, not only against the petitioner, but against all other taxpayers for taxes levied against them. And it is merely an avoidance of the decision of the Federal rights, asserted in this instance, upon an untenable ground to say that when the petitioner was subjected to the charge or charges in each of these years by the lodging of the tax lists with the county treasurer, and when the other taxpayers employing competing moneyed capital were subjected to the grossly discriminatory taxes in each of these years by the lodging of the tax lists with the county treasurer, that the rights of the petitioner arising under the Federal laws and the Federal Constitution were not then and there infringed by virtue of the acts of the officials of the state and its subdivision so as to give to the petitioner the right to the relief claimed.

We have heretofore called to the Court's attention the decision of the Circuit Court of Appeals of the

Eighth Judicial Circuit in the case of Munn *v.* Des Moines National Bank, particularly with respect to its binding effect upon the Supreme Court of Iowa. There were involved in that case Federal questions. The decision of the Circuit Court of Appeals became final, since no effort was made to procure a review thereof by this Court. The Supreme Court of Iowa in Des Moines National Bank *v.* Fairweather, 191 Iowa at p. 1244, expressly recognizes the binding effect of such a final decision upon a Federal question.

But we desire the Court to consider the effect of the judgment in the case of Munn *v.* Des Moines National Bank *et al., supra,* from another aspect. That case, as we have shown, involved the taxation of the shares of stock of the Des Moines National Bank, the Bankers Trust Company, and the Iowa Loan and Trust Company, during the years 1919 to 1922 inclusive, which are the same years as are involved in this case. Each of those institutions was engaged in the commercial banking business in Des Moines, Iowa, the location of the business of petitioner. There were involved in those cases Federal questions, namely: the violation through the method of taxation employed by the taxing officials of the State of Iowa and its political subdivisions of the provisions of Section 5219 of the Revised Statutes of the United States, and of the constitutional rights of the plaintiffs in those cases. These Federal questions were resolved in favor of the plaintiff banks in those cases, and the decision of those cases is a finality. So final was the decision that the taxes which were ultimately exacted from the plain-

tiffs therein was at the rate of only five mills on the dollar of assessed valuation in each of the years involved. There can be no question of the right of the Federal courts to have decided the Federal questions presented by those cases, nor of the fact that the Federal courts of final resort did decide those questions, and the decision was in favor of the plaintiff banks, who were direct active banking competitors of the petitioner. The decision and judgment in those cases became binding upon the parties thereto and upon everyone else, for that judgment, being a finality, could not be further reviewed. So here we have the taxation in the years 1919 to 1922 inclusive of the shares of stock of a national and two state banks which were in direct banking competition with the appellants at the rate of five mills on the dollar of assessed valuation. True, this taxation was influenced by and the result of the final decision of the United States Courts, but it was none the less real and this does not alter the fact that shares of stock of competing banks in Des Moines were taxed at five mills on the dollar in the years involved in this suit, nor was such result any more brought about by the decision of a Federal question than was the result of the application of the decision of Home Savings Bank *v.* Des Moines, 205 U. S. 503, to the case of First National Bank of Estherville *v.* City Council, 150 Iowa 95, where it was held that the holding in the former case was final and conclusive in the latter because it was the final decision of a Federal right by the United States Courts. Such being the state of the law as announced by these deci-

sions, and such being the facts as to which there can be no dispute, we insist that petitioner was entitled to the relief sought.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the errors committed by the Supreme Court of Iowa in rendering its decision and judgment may be corrected, and that petitioner may have the benefit of the rights to which it is entitled under the laws and Constitution of the United States, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Supreme Court of Iowa, and finally reverse it.

Respectfully submitted,

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APPENDIX.

The following are the statutes of Iowa so far as material to this appeal, involving the procedure as to the assessment and collection of taxes.

Section 1310, 1913 Supplement.

MONEYS — CREDITS — ANNUITIES — BANK NOTES — STOCK.—Moneys, credits and corporation shares or stocks, except as otherwise provided, cash, circulating notes of national banking associations, and United States legal tender notes, and other notes, and certificates of the United States payable on demand, and circulating or intended to circulate as currency, notes, including those secured by mortgage, accounts, contracts for cash or labor, bills of exchange, judgments, choses in action, liens of any kind, securities, debentures, bonds other than those of the United States, annuities, and corporation shares or stocks not otherwise taxed in kind, shall be assessed, and, excepting shares of stock of national, state and savings banks and loan and trust companies, and moneyed capital as hereinafter defined, shall be taxed upon the uniform basis throughout the state of five mills on the dollar of actual valuation, same to be assessed and collected where the owner resides. The millage tax here provided for shall be in lieu of all other taxes upon moneys and credits and shall be levied by the board of supervisors, placed upon the tax list and collected by the county treasurer, and the amount collected in the various taxing districts of the state shall be divided between the various funds upon the same *pro rata* basis as other taxes collected in such taxing district are apportioned. All moneyed capital within the

meaning of section fifty-two hundred nineteen of the revised statutes of the United States shall be listed and assessed against the owner thereof at his place of business, and if a corporation at its principal place of business, at the same rate as state, savings, national bank and loan and trust company stock is taxed, in the same taxing district, and at the actual value of the moneyed capital so invested. The person or corporation using moneyed capital in competition with bank capital shall furnish the assessor upon demand a full and complete itemized sworn statement showing the amount of moneyed capital so used.

Section 1322, 1913 Supplement.

NATIONAL, STATE AND SAVINGS BANKS—REFUSAL TO COMPLY WITH STATUTE—PENALTY.—Section thirteen hundred twenty-two of the supplement to the code, 1907, is hereby repealed and the following enacted in lieu thereof:

"Shares of stock of national banks and state and savings banks, and loan and trust companies, located in this state, shall be assessed to the individual stockholders at the place where the bank or loan and trust company is located. At the time the assessment is made the officers of national banks and state and savings banks and loan and trust companies shall furnish the assessor with lists of all the stockholders and the number of shares owned by each, and the assessor shall list to each stockholder under the head of corporation stock the total value of such shares. To aid the assessor in fixing the value of such shares, the said corporation shall furnish him a verified statement of all the matter provided in section thirteen hundred twenty-one of the supplement to the code, 1907, which shall also show separately the amount of the capital

stock and the surplus and undivided earnings, and the assessor from such statement shall fix the value of such stock based upon the capital, surplus, and undivided earnings. In arriving at the total value of the shares of stock of such corporations, the amount of their capital actually invested in real estate owned by them and in the shares of stock of corporations owning only the real estate (inclusive of leasehold interests, if any,) on or in which the bank or trust company is located, shall be deducted from the real value of such shares, and such real estate shall be assessed as other real estate, and the property of such corporation shall not be otherwise assessed. A refusal to furnish the assessor with the list of stockholders and the information required under this section shall be deemed a misdemeanor and any bank or officer thereof so refusing shall be punished by a fine not exceeding five hundred dollars."

Section 1322-1a, 1913 Supplement.

BANK STOCKS—MONEYED CAPITAL—TAXABLE VALUE. —For the purpose of placing the taxation of bank and loan and trust company stock and moneyed capital as nearly as possible upon a taxable value relatively equal to the taxable value at which other property is now actually assessed throughout the state as compared with the actual value thereof, it is hereby provided that state, savings and national bank stock and loan and trust company stock and moneyed capital shall be assessed and taxed upon the taxable value of twenty per cent of the actual value thereof, determined as herein provided, which twenty per cent of the actual value shall be taken and considered as the taxable value and shall be taxed as other property in such taxing district.

Section 1383, 1913 Supplement.

TAX LIST.—All taxes, except road taxes, which are uniform throughout any township or school district shall be formed into a single tax, and entered upon the tax list in a single column, to be known as a consolidated tax, and each receipt shall show the percentage levied for each separate fund. Before the first day of January in each year, the county auditor shall transcribe the assessments of the several townships, towns or cities into a book, to be provided at the expense of the county for that purpose, to be known as the tax list, properly ruled and headed, with distinct columns, in which shall be entered the names of taxpayers, descriptions of lands, number of acres and value, number of town lots and value, value of personal property and each description of tax, with a column for polls and one for payments, and shall complete the same by carrying out the totals and footings of columns. At the end of the list of each township, town or city he shall make an abstract thereof, and apportion the consolidated tax among the respective funds to which it belongs, according to the number of mills levied for each.

Section 1385-b, 1913 Supplement.

ERRORS CORRECTED—OMITTED PROPERTY.—The auditor may correct any error in the assessment or tax list, and may assess and list for taxation any omitted property; but before assessing and listing for taxation any omitted property he shall notify by registered letter the person, firm, corporation, or administrator, or other person in whose name the property is taxed, to appear before him at his office within ten days from the time of said notice and show cause, if any there be, why such correction or assessment should not be made, and should such party feel ag-

grieved at the action of said auditor he shall have the right of appeal therefrom to the district court. And if such correction or assessment is made after the books have passed into the hands of the treasurer he shall be charged or credited therefor as the case may be. All expense incurred in the making of said correction or assessment shall be borne *pro rata* by the funds which are affected by said correction and the proceedings to be reported to the board of supervisors.

Code of Iowa, 1897, Sec. 1387.

TAX LIST DELIVERED.—He (County Auditor) shall make an entry upon the tax list showing what it is, for what county and year, and deliver it to the county treasurer on or before the thirty-first day of December, taking his receipt therefor; and such list shall be a sufficient authority for the treasurer to collect the taxes therein levied. But no informality therein, and no delay in delivering the same after the time above specified, shall affect the validity of any taxes, sales, or other proceedings for the collection of such taxes.

Code of Iowa, 1897, Sec. 1390.

TREASURER TO COLLECT.—The treasurer, after making the entry, shall proceed to collect the taxes, and the list shall be his authority and justification against any illegality in the proceedings prior to receiving the list; and he is also authorized and required to collect, as far as practicable, the taxes remaining unpaid on the tax books of previous years.

Code of Iowa, 1897, Sec. 1396.

INFORMATION AS TO TAXES DUE.—The treasurer, when applied to by letter and receiving thirty cents in pos-

age stamps or money, and ten cents additional for each tract of one hundred and sixty acres in excess of three hundred and twenty acres, in no case to exceed fifty cents, shall correctly answer the same by mail, giving the amount and interest of unpaid taxes and of any tax sales thereof as the same appear upon the tax list in his office, and upon the return of the letter or a copy, before the last day of the current month, with the demand due as shown therein, he shall pay the taxes and forward to the sender a tax receipt without further charge.

Code of Iowa, 1897, Sec. 1397.

PENALTY.—Any treasurer who shall neglect for twenty days after the receipt of any such letter, with money or stamps inclosed as aforesaid, to answer the same fully as required in the preceding section, or who shall directly or indirectly receive or be concerned in receiving any greater compensation for the service mentioned than as above provided, shall forfeit to the person aggrieved, for each offense, the sum of fifty dollars, which may be recovered in a civil action.

Code of Iowa, 1897.

SECTION 1417. REFUNDING ERRONEOUS TAX.—The board of supervisors shall direct the treasurer to refund to the taxpayer any tax or portion thereof found to have been erroneously or illegally exacted or paid, with all interest and costs actually paid thereon. In case any real estate subject to taxation shall be sold for the payment of such erroneous tax, interest or costs, the error or irregularity in the tax may be corrected at any time provided in this chapter but such correction shall not affect the validity of the sale or the right or title conveyed by a treasurer's deed, if

the property was subject to taxation for any of the purposes for which any portion of the taxes for which the land was sold was levied, and the taxes were not paid before the sale, or the property redeemed from sale.

(Laws of the Thirty-seventh General Assembly.)

CHAPTER 343.

TAXATION.

SECTION 1. Rate of taxation—adjusted taxable value. That hereafter in all taxing districts in the state, including townships, school districts, cities, towns and counties, when by law then existing the people are authorized to determine by vote, or officers are authorized to estimate or determine, a rate of taxation required for any public purpose, such rate shall in all cases be estimated and based upon the adjusted taxable valuation of such taxing district for the preceding calendar year.

SECTION 2. Amounts certified in dollars, not by rate. That when any authorized tax rate within any taxing district of the state, including townships, school districts, cities, towns and counties, shall have been thus determined as provided by law, the officer or officers charged with the duty of certifying said authorized rate to the county auditor or board of supervisors, shall, before certifying the same, compute upon the adjusted taxable valuation of such taxing district for the preceding calendar year (not including moneys and credits and other moneyed capital taxed at a flat rate, as provided in section thirteen hundred ten (1310) supplement to the code, 1913), the amount of tax said rate will raise, stated in dollars, and shall certify said computed amount in dollars, and not by rate, to the county auditor and board of supervisors.

SECTION 3. Computation of rate. When the valuations for the several taxing districts shall have been adjusted by the several boards, as provided by law, for the current year, the county auditor shall thereupon compute and spread upon the records such a rate, not exceeding the rate authorized by law, on said adjusted taxable valuations for the current year (not including moneys and credits and other moneyed capital, taxed at a flat rate, as provided in section thirteen hundred ten (1310), supplement to the code, (1913) as shall raise the amount required for each taxing district within the county, as theretofore determined under the provisions of this act, and no larger amount; provided, however, that if in adjusting the rate to be levied in any taxing district to conform to this act, such rate shall make necessary the levying of a fraction of a mill in excess of one-half of one-tenth of a mill, said fractional excess may be computed as one-tenth of a mill, which latter shall be the smallest required to be spread upon the tax lists for any purpose except rates applicable to state purpose, provided, however, that nothing herein shall be construed as interfering with the right of any taxing district to receive its due proportion of the taxes on moneys and credits and other moneyed capital taxed at a flat rate as provided in section thirteen hundred ten (1310), supplement to the code, 1913.

SECTION 4. Record of rates. On the determination by the auditor of the necessary rates as herein directed, it is made his duty to enter a record of such rates for each taxing district upon the permanent records of his office in a book to be kept for that purpose.